ered a covenant to indemnify and the value at the time of eviction may be recovered. *Horsford* v. *Wright* (Conn.), Kirby 3; *Gore* v. *Brazier,* 3 Mass. 523; *Cecconi* v. *Rodden,* 147 Mass. 164; *Park* v. *Bates,* 12 Vt. 381; *Williamson* v. *Williamson,* 71 Me. 442. When the seisin of part of the property fails the damages are the purchase price, and interest, of the part which fails. The damages will bear the same proportion to the whole purchase money that the value of the part to which the title failed bears to the value of the whole premises. *Phillips* v. *Reichart,* 17 Ind. 120; *Norton* v. *Norton,* 10 Conn. 422; *Bibb* v. *Freeman,* 59 Ala. 612; *Weber* v. *Anderson,* 73 Ill. 439; *Wright* v. *Nipple,* 92 Ind. 310; *Scantlin* v. *Allison,* 12 Kans. 85; *Cornell* v. *Jackson* (Mass.), 3 Cush. 506; *Adkins* v. *Tomlinson,* 121 Mo. 487; *Beaupland* v. *McKeen,* 28 Pa. St. 124; *Partridge* v. *Hatch,* 18 N. H. 494. It is submitted that the damages awarded in the principal case are on no logical basis; neither a proportionate part of the consideration nor a proportionate part of the value at the time of conveyance. The rule is properly stated in *Partridge* v. *Hatch, supra,* viz.: "If the title fail to part of the land conveyed the grantee may recover a sum bearing the ratio to the whole purchase money with interest, that the value of such part of the land bears to the whole conveyed."

DAMAGES—MITIGATION—BREACH OF CONTRACT.—"A contract for the sale of goods by the defendant to the plaintiff provided that delivery should be required during a period of nine months, and that payment should be made for each installment within one month of delivery, less 2½ per cent discount." "The plaintiffs failed to make punctual payment for the first installment, and the defendant * * * refused to deliver any more of the goods under the contract, but offered to deliver the goods at the contract price if the plaintiffs would agree to pay cash at the time of the orders." *Held,* "what is reasonable for a person to do in mitigation of his damages cannot be a question of law, but must be one of fact in the circumstances of each particular case." *Payzu, Ld.,* v. *Saunders* (C. A.) [1919], 2 K. B. 581.

This pronouncement from an authoritative source is refreshing. It means that we have no magic word by the utterance of which we can settle these cases, but that in every instance we must satisfy some fairly sensible men—a jury—that the plaintiff has done what reasonably might have been expected of him under all the circumstances to reduce the amount of damages. In the case of *Lawrence* v. *Porter* (1894), 63 Fed. 62, 11 C. C. A. 27, it was held that the offer to sell for cash and not for credit must be accepted because it was an offer in "mitigation." In the case of *Whitmarsh* v. *Littlefield* (1887), 46 Hun. 418, it was held that a cash offer of a less sum instead of the first cash offer of a greater sum need not be accepted because it was an offer in "substitution." This court also said that the second proposition was one to "abandon the old contract," and therefore it would result in a "waiver" or any rights under it. In a later federal case on a state of facts similar to those in *Lawrence* v. *Porter, supra,* the court decided that this case was not a precedent because the second offer was "conditional" rather than "unconditional." *Campfield* v. *Sauer* (1911), 189 Fed. 576. On the

basis of these decisions the writer of a note in 10 MICH. L. REV. 315 formulated the propositions that the new "offer must be one to mitigate and not to substitute; it must be unconditional and not conditional, and lastly, must be without abandonment of waiver." He hazarded further that "A fourth essential might well be inferred from the whole case, and that is that the offer must be beneficial in order to make its acceptance necessary." The trouble with all these refinements is that in every case the question is still one of fact as to which of these two sets of antinomic words applies. Finally, the writer of the note in 16 MICH. L. REV. 536 suggests that all these forced distinctions between words should be abandoned, and that "The sole question should be: Is it reasonable under all the circumstances that the new offer should be accepted?" This is apparently an anticipation of the conclusion in our instant case.

DOWER IN EQUITABLE ESTATES.—D's husband during coverture contracted to purchase land from P and paid $900 on the contract. The contract was assigned to X and D did not join in the assignment. In a suit to foreclose by P, D claims a dower interest as against X in the surplus. *Held,* D not entitled to dower in equitable estate not owned by her husband at the time of his death. *Corcorren* v. *Sharum* (Ark., 1920), 217 S. W. 803.

Prior decisions in Arkansas had established that the general statute providing that a widow should be endowed of all lands whereof her husband was seised of an estate of inheritance extended the right to dower to equitable as well as legal estates. *Kirby* v. *Vantrece,* 26 Ark. 368; *Spaulding* v. *Haley,* 101 Ark. 296. A similar statute has been held to be merely declaratory of the common law and that dower would only attach to legal estates. *Will of Prasser,* 140 Wis. 92. But the court in a later case decided that a full equitable title in realty with a right to be immediately clothed with the legal title is substantially a legal estate within the meaning of the dower statute. *Harley* v. *Harley,* 140 Wis. 282. So zealous indeed are the courts to extend the right of dower to equitable estates that one court at least has extended the common law rule without the aid of any statute. *Shoemaker* v. *Walker,* 2 Serg. and R. (Pa.), 554. In some states dower is limited by statute to the equitable estates of which the husband died seised. *Thompson* v. *Thompson,* 1 Jones, 430. But in other jurisdictions the same result has been reached by judicial decision. *Heed* v. *Ford,* 16. B. Mon. (Ky.) 114; *Bowie* v. *Berry,* 1 Md. Ch. Dec. 452; *Morse* v. *Thorsell,* 78 Ill. 600; *McRae* v. *McRae,* 78 Md. 270. But see *James* v. *Upton,* 96 Va. 296. While the former Arkansas cases may be supported by interpreting the words estates of inheritance as meaning either in law or in equity, the principal case has read into the statute a limitation of dower in equitable estates which they refuse to apply to dower in legal estates, a doctrine certainly not warranted by the words of the statute.

EQUITABLE PROTECTION OF EASEMENTS—BALANCE OF CONVENIENCE.—Plaintiff owns a city lot upon which formerly stood an old house in the cellar of which was an excellent well. Defendant owns an adjoining lot on which is his residence, which was formerly connected by an underground pipe with